



Copyright Office

[Docket No. 2021-7]

Deferred Registration Examination Study: Notice and Request for Public Comment

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The U.S. Copyright Office is undertaking a public study to evaluate the merits of providing an option to defer examination of copyright registration application materials until a later request by the applicant. To aid in this effort, the Office is soliciting input from interested members of the public.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office website at <https://www.copyright.gov/policy/deferred-examination>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Megan Efthimiadis, Assistant to the General Counsel, by email at meft@copyright.gov or telephone at (202) 707-8350.

SUPPLEMENTARY INFORMATION: On May 24, 2021, Senator Thom Tillis sent a letter seeking the Copyright Office's "expertise and guidance regarding adjusted

copyright examination and registration requirements.”¹ He requested that the Office complete “a study regarding the feasibility, benefits, and costs of creating an option for deferring examination of an application.”² The letter further provides:

The study should focus on adding an option for registering a work in which the registrant can obtain an effective date of registration upon submission of an application and deposit, while choosing to defer the examination of the submitted work until the registrant subsequently requests such an examination. It should also consider and address what, if any, statutory changes would be necessary to enable applicants who are given such an effective date of registration to be able to commence a civil lawsuit in light of *Fourth Estate Pub. Ben. Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881 (2019). . . . [T]his study must also take particular account of the needs of the Library to maintain and grow its collections.³

I. Background

A. The Current Registration System

Under the Copyright Act, copyright protection attaches automatically to an original work of authorship as soon as it is created and fixed in tangible form.⁴ Registration of a claim to copyright is not required.⁵ Although registration is optional, the Copyright Act provides substantial incentives to encourage early registration. First, a certificate of registration issued by the Office after examination constitutes *prima facie* evidence of the validity of the copyright and of the facts stated in the certificate, if the registration is made before or within five years of the work’s first publication.⁶ Second, the Act provides that copyright owners are eligible to obtain statutory damages and attorney’s fees only if the effective date of registration (“EDR”) is within three months of

¹ Letter from Senator Thom Tillis, Ranking Member, S. Comm. on the Judiciary, Subcomm. on Intellectual Prop., to Shira Perlmutter, Register of Copyrights, U.S. Copyright Office at 1 (May 24, 2021), <https://www.copyright.gov/policy/deferred-examination>.

² *Id.*

³ *Id.* at 1–2.

⁴ 17 U.S.C. 102(a) (“Copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression.”); *see id.* 302(a) (“Copyright in a work created on or after January 1, 1978, subsists from its creation.”).

⁵ *Id.* 408(a) (“Such registration is not a condition of copyright protection.”).

⁶ *Id.* 410(c).

first publication or before the infringement commences.⁷ Finally, a civil action for copyright infringement involving a United States work may not be instituted until registration has been made or refused by the Office.⁸

To apply for registration, an applicant must deliver to the Office a completed application form, the applicable filing fee, and a deposit consisting of a complete copy (or copies) of the work to be registered.⁹ The Office “examin[es]” the “material deposited” to determine whether it “constitutes copyrightable subject matter” and whether “the other legal and formal requirements of [title 17] have been met.”¹⁰ This examination includes confirming that the correct filing fee was submitted and that applicable Office regulations and practices have been complied with (*e.g.*, whether the type of registration used is available for the applicant’s claim).¹¹ It also includes reviewing the application to ensure that the facts stated are not contradicted by each other or by information in the deposit or elsewhere in the materials submitted.¹²

After examination, if the Office determines that the work constitutes copyrightable subject matter and that the other requirements have been met, it will register the claim and issue a certificate of registration.¹³ The Office will also create an official public record of the registration in its searchable online records catalog and will make the deposit copies available for public inspection.¹⁴ This public record includes key

⁷ *Id.* 412. Section 410(d) states that the EDR “is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office.”

⁸ *Id.* 411(a); *see also* *Fourth Estate Pub. Ben. Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881 (2019).

⁹ 17 U.S.C. 408, 409, 708; *see also* U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 204 (3d ed. 2021) (“Compendium (Third)”).

¹⁰ 17 U.S.C. 410(a).

¹¹ *Compendium (Third)* secs. 206, 602.4.

¹² *Id.* at secs. 206, 602.4, 603, 609.

¹³ 17 U.S.C. 410(a).

¹⁴ *Id.* 705(a)–(b).

facts relating to the authorship and ownership of the claimed work, as well as other information, including the title, year of creation, date of publication, and the type of authorship.¹⁵ If the Office determines that a work is not copyrightable or that the claim is invalid for any other reason, the Office will refuse registration and will not issue a certificate or create an entry in the public catalog.¹⁶

While the Office offers several registration options,¹⁷ there is currently no option to delay or defer examination of the submitted application materials. The Office does, however, offer an option to preregister certain classes of works,¹⁸ without the more comprehensive review undertaken as part of the full registration process. Preregistration enables rightsholders to sue in court prior to full registration, if followed later with an application package for full registration within the statutorily allotted time.¹⁹ Instead of submitting a deposit copy of the work for examination, preregistration applicants only need to provide a short description of the work, and the Office conducts only a limited review of the application to ascertain whether the work is in a class for which the preregistration option is available.²⁰

B. Previously Received Public Comments

In connection with broader efforts to modernize its technological infrastructure, the Office has solicited public input in prior proceedings concerning the registration

¹⁵ The Office's online public records catalog is available at <https://cocatalog.loc.gov>.

¹⁶ 17 U.S.C. 410(b).

¹⁷ For example, the Office issues basic registrations to register copyright claims in individual works and certain works containing separate and independent works, such as collective works and units of publication; group registrations to register copyright claims in groups of related works, such as photographs and unpublished works; renewal registrations to cover the renewal term for works copyrighted before January 1, 1978; and supplementary registrations to correct or amplify the information in a registration. *See* Compendium (Third) secs. 202.1, 1402.3.

¹⁸ Preregistration is currently available for motion pictures, sound recordings, musical compositions, literary works being prepared for publication in book form, computer programs (including videogames), and advertising or marketing photographs. 37 CFR 202.16(b)(1).

¹⁹ 17 U.S.C. 408(f), 411(a).

²⁰ 37 CFR 202.16(c)(6)–(7).

process. In some of these proceedings, commenters discussed proposals concerning a deferred examination registration option (which they also sometimes referred to as delayed examination or provisional registration).²¹ To help inform public comment in the present proceeding, these previous proposals are briefly summarized below.²²

While commenters varied in their proposed approaches, they generally envisioned a deferred examination option with the following components: (1) an applicant could submit the application materials for full registration at a discounted fee;²³ (2) the Office would not immediately examine any of the materials;²⁴ (3) the Office would still ingest

²¹ These proceedings include: Registration Modernization, Dkt. No. 2018-9 (comments available at <https://copyright.gov/rulemaking/reg-modernization/>); Copyright Office Fees, Dkt. No. 2018-4 (comments available at <https://copyright.gov/rulemaking/feestudy2018/>); Group Registration of Photographs, Dkt. No. 2016-10 (comments available at <https://copyright.gov/rulemaking/group-photographs/>); and Copyright Protection for Certain Visual Works, Dkt. No. 2015-1 (comments available at <https://copyright.gov/policy/visualworks/>).

²² The Office notes that these comments were all received before the Supreme Court’s decision in *Fourth Estate* and prior to the significant reduction in registration processing times achieved by the Office over the last few years—from an overall average of about seven months to about three months for all claims, with approximately 70% of all applications now being processed in about 1.9 months on average. U.S. Copyright Office, *Registration Processing Times*, <https://copyright.gov/registration/docs/processing-times-faqs.pdf> (last visited December 6, 2021); see generally U.S. Copyright Office, *Explanation of U.S. Copyright Office Registration Processes and Challenges* (May 31, 2019), <https://www.copyright.gov/laws/hearings/response-to-march-14-2019-senate-letter.pdf>.

²³ See, e.g., Coalition of Visual Artists (“CVA”) Registration Modernization 2018 NOI Comments at 3, 18; Copyright Alliance Registration Modernization 2018 NOI Comments at 11 (“[T]he fee associated with the Delayed Examination Registration would be significantly less than the fee paid associated with an examined application.”); ImageRights International (“ImageRights”) Registration Modernization 2018 NOI Comments at 4 (explaining that the fees for a deferred examination option should be “nominal” and “palatable” because the option would “eliminate the need and costs for the specialists to review every single [work] submitted”); Shaftel & Schmelzer Registration Modernization 2018 NOI Comments at 34 (“Provisional registration should cost less for the first step, and cost the same in total after the second step as a regular complete examination and registration.”); Professional Photographers of America (“PPA”) Office Fees Initial Comments at 22; see also CVA Registration Modernization 2018 NOI Comments at 23–24 (stating that “[s]urvey results indicate broad support for . . . possibly us[ing] online, tiered subscriptions” where “[t]he registrant would opt only to register provisionally, in exchange for a lower subscription fee”); ImageRights Registration Modernization 2018 NOI Comments at 4 (asking the Office to consider whether the fee should be subscription based, allowing “a claimant to submit provisional registrations of an unlimited number of photographs”); CVA Group Registration of Photographs Comments at 59 (“The Copyright Office could create tiered registration fees for specific quantities of images included in a group registration.”).

²⁴ See, e.g., CVA Registration Modernization 2018 NOI Comments at 18 (“Copyright owners would pay a discounted fee for a registration of works *without an immediate examination by the Copyright Office*.”); Copyright Alliance Registration Modernization 2018 NOI Comments at 11

information about the unregistered work into the public catalog, retain the deposit, and make it available for the Library's collections;²⁵ (4) if later requested, for an additional fee, the Office would examine the application materials and decide whether or not to register the work;²⁶ and (5) if the Office registered the work, then the statutory benefits of registration would attach, with an EDR reflecting the date when the original deferred examination application materials were received.²⁷ Commenters generally seemed to contemplate that examination and full registration would primarily be sought in

(explaining that the application materials submitted under the deferred examination option "would not be examined by the Copyright Office" when initially submitted "so no certificate would be issued"); Graphic Artists Guild ("GA Guild") Registration Modernization 2018 NOI Comments at 4–5.

²⁵ See, e.g., Copyright Alliance Registration Modernization 2018 NOI Comments at 14 & n.17 (stating that "[t]he increase in registrations would improve the public record," "[t]he Office could easily include a distinction between Delayed Examination Registrations and examined registrations in the database, so as to make clear which works have been examined," and "[a]n increase in registrations would increase the number of deposits for the Library"); CVA Registration Modernization 2018 NOI Comments at 20–21; PPA Registration Modernization 2018 NOI Comments at 13 ("Provisional registration could be paired with a self-deposit system in which creators could create their own database of works, which would be open to the Copyright Office and others for interactive searching."); Copyright Alliance Office Fees Initial Comments at 19–20; PPA Office Fees Initial Comments at 22; Digital Public Library of America ("DPLA") Visual Works Study Initial Comments at 5.

²⁶ See, e.g., CVA Registration Modernization 2018 NOI Comments at 19 ("If a copyright holder subsequently wanted to bring an infringement suit, they would simply pay the Copyright Office a separate fee to have the 'provisional registration' examined for originality and other formalities and converted to a regular registration."); Copyright Alliance Registration Modernization 2018 NOI Comments at 11–12 ("If a rights holder wants to bring an infringement case, the rights holder would have to convert the Delayed Examination Registration to an examined registration, which would necessitate . . . the Office examining the Delayed Examination and approving its conversion into an examined registration, and . . . paying a conversion fee."); ImageRights Registration Modernization 2018 NOI Comments at 4; Shaftel & Schmelzer Registration Modernization 2018 NOI Comments at 34; Shaftel & Schmelzer Office Fees Initial Comments at 27–28; CVA Group Registration of Photographs Comments at 58.

²⁷ See, e.g., GA Guild Registration Modernization 2018 NOI Comments 4–5 ("[O]nce the registration is converted to a regular registration, the copyright owner would then have all the statutory benefits of a regular registration, with the effective date of registration being the date the Copyright Office received the provisional registration."); CVA Registration Modernization 2018 NOI Comments at 18–19 ("The EDR for determining benefits under copyright law . . . would be the date the Copyright Office received the 'Provisional Application' along with the required deposit copy and fee payment."); Copyright Alliance Registration Modernization 2018 NOI Comments at 12; PPA Registration Modernization 2018 NOI Comments at 13; CVA Group Registration of Photographs Comments at 59 ("When the application for deferred examination is approved, the effective date of the registration will date back to when the materials were filed, as is the present establishment of date of registration.").

connection with an infringement suit.²⁸ No commenter proposed eliminating the current registration process for those who prefer immediate examination.²⁹

Commenters offered different proposals regarding eligibility for deferred examination. Some recommended that the option only be available for “high-volume registrations”³⁰ or specific classes of works like photographs,³¹ while others suggested it be available for all works.³² With respect to who should be eligible to request later examination of a deferred examination claim, the Copyright Alliance suggested that the party should be the “rights holder,”³³ while CVA proposed that “a party other than the copyright holder” who is seeking “a declaration of non-infringement or other legal proceeding” should also “be permitted to pay the fee and have the Copyright Office undertake a final review of the [deferred examination] application” materials.³⁴

Commenters also expressed different opinions regarding the appropriate time limit, if any,³⁵ for examination to be requested. Some commenters suggested that the examination request should be made within a specific time period; if not, the applicant would lose the benefit of having filed the deferred examination application.³⁶ Some

²⁸ See, e.g., CVA Registration Modernization 2018 NOI Comments at 19; Copyright Alliance Registration Modernization 2018 NOI Comments at 11–12; PPA Office Fees Initial Comments at 22; Shaftel & Schmelzer Office Fees Initial Comments at 27–28.

²⁹ See, e.g., PPA Registration Modernization 2018 NOI Comments at 14; Shaftel & Schmelzer Registration Modernization 2018 NOI Comments at 33 (“We also want the Copyright Office to keep the existing immediate examination system, too, for authors/creators who ask for it.”).

³⁰ PPA Office Fees Initial Comments at 22.

³¹ ImageRights Registration Modernization 2018 NOI Comments at 4.

³² CVA Registration Modernization 2018 NOI Comments at 18; Copyright Alliance Registration Modernization 2018 NOI Comments at 11.

³³ Copyright Alliance Registration Modernization 2018 NOI Comments at 11–12.

³⁴ CVA Registration Modernization 2018 NOI Comments at 19.

³⁵ See Shaftel & Schmelzer Registration Modernization 2018 NOI Comments at 34 (“There should be no deadline to convert the first step of a provisional registration to finalize the completed examined registration, and no sunset on the EDR of works submitted for the first step.”)

³⁶ Copyright Alliance Registration Modernization 2018 NOI Comments at 12 n.14.

proposed that this period be as short as one year, while others proposed that it be as long as the full term of the copyright.³⁷

Comments also diverged with respect to how the deferred examination option would impact the registration prerequisite for instituting a civil action for infringement. While most commenters supported maintaining the existing registration rule,³⁸ CVA asked the Office to consider whether a request to examine the deferred examination application materials “should be sufficient for filing a lawsuit, or should be moved to the ‘front of the line’ for immediate processing.”³⁹

Commenters encouraged the Office to explore how best to administer a deferred examination option, taking into account its budget and resources.⁴⁰ Commenters also identified a number of potential benefits of offering a deferred examination option,

³⁷ CVA Registration Modernization 2018 NOI Comments at 20 (“[W]e believe that a provisional registrant should be able to finalize registration any time in the life of the copyright.”); Copyright Alliance Registration Modernization 2018 NOI Comments at 12 n.14 (“Some of our members believe the time period should be as long as the term of protection, while others believe it should be as short as 1 year.”); ImageRights Registration Modernization 2018 NOI Comments at 4 (suggesting claimants would have “some period” of time to request examination).

³⁸ See e.g., PPA Registration Modernization 2018 NOI Comments at 14 (“Those who choose to utilize provisional registration and self-deposit would establish an effective date of registration but would not be considered to have satisfied the Section 411 requirement to bring suit.”); CVA Registration Modernization 2018 NOI Comments at 19; Copyright Alliance Registration Modernization 2018 NOI Comments at 11–12 (“If a rights holder wants to bring an infringement case, the rights holder would have to convert the Delayed Examination Registration to an examined registration.”); DPLA Visual Works Study Initial Comments at 5 (stating that deferred examination should “not carry the full benefits of full registration, such as access to statutory damages and attorney’s fees”).

³⁹ CVA Registration Modernization 2018 NOI Comments at 19–20.

⁴⁰ Copyright Alliance Office Fees Initial Comments at 20 (“The Office should also articulate any barriers it believes it faces in implementing innovative fee structures. It’s one thing if the Office is restricted from implementing certain changes because the statute does not provide it the authority to do so, but it’s another if the Office is restricted because of practical or technological limitations—the latter being much easier to address. The Office should also explore other ways to reduce examination costs in addition to modernizing.”).

including increasing the number of registrations,⁴¹ encouraging timely registrations,⁴² expanding the public record,⁴³ improving the Office's efficiency by removing the examination step,⁴⁴ decreasing processing times,⁴⁵ lowering the Office's expenses,⁴⁶ and increasing the number of deposits available for the Library's collections.⁴⁷

⁴¹ Copyright Alliance Registration Modernization 2018 NOI Comments at 13–14 (stating that deferred examination would “help incentivize those who want to register but cannot afford to do so under the existing system”); GA Guild Registration Modernization 2018 NOI Comments at 5 (stating that deferred examination would “provide individual copyright holders an affordable means to effectively register their works and avail themselves of the protections of registration”); PPA Office Fees Initial Comments at 22 (“With the lower provisional fee, this approach would encourage creators to register more often.”); CVA Registration Modernization 2018 NOI Comments at 21 (stating that deferred examination would result in “lower registration fees, faster processing, and drastically increased limits on the number of works in a single registration”); DPLA Visual Works Study Initial Comments at 5; Shaftel & Schmelzer Registration Modernization 2018 NOI Comments at 34.

⁴² Copyright Alliance Registration Modernization 2018 NOI Comments at 13 (stating that deferred examination would “[e]ncourage rights holders to register more quickly and not wait to determine which of their works are commercially valuable or infringed before registering”).

⁴³ CVA Registration Modernization 2018 NOI Comments at 21 (“[T]he public record would benefit from the increased registrations.”); Copyright Alliance Registration Modernization 2018 NOI Comments at 13; PPA Office Fees Initial Comments at 22.

⁴⁴ Copyright Alliance Registration Modernization 2018 NOI Comments at 12 (stating that deferred examination would “increase the Office's efficiency by eliminating the need to fully review every single application that comes through the door and thus also lower the Copyright Office expenses and improve pendency”); CVA Registration Modernization 2018 NOI Comments at 21 (“Under a provisional registration system, the Copyright Office would eliminate the expensive and inefficient burden of examining all works.”); Shaftel & Schmelzer Registration Modernization 2018 NOI Comments at 33 (“Provisional registration solves time-consuming examination procedures for the Copyright Office. Very few copyright registrations are actually litigated in courts.”).

⁴⁵ CVA Registration Modernization 2018 NOI Comments at 21 (stating that deferred examination would result in “faster processing”); PPA Registration Modernization 2018 NOI Comments at 14 (discussing how a deferred examination option creates “a system for receiving simplified registrations that require a minimum of manpower to process (or none at all in an automated system)”).

⁴⁶ Copyright Alliance Registration Modernization 2018 NOI Comments at 14 (“It will be easier for the Copyright Office to balance its budget by allowing the Office to use congressional appropriations on modernization or other expenses, rather than to subsidize registration examination.”); *id.* at 12–13 (“If Delayed Examination Registrations were permitted, the Office would could set the fee for a Delayed Examination Registration to be equal to the cost of processing the application, thereby allowing the Office to benefit from increased filings without losing money.”).

⁴⁷ Copyright Alliance Registration Modernization 2018 NOI Comments at 14 (“An increase in registrations would increase the number of deposits for the Library.”); CVA Registration Modernization 2018 NOI Comments at 20 (noting that the proposal “would generate a significant upsurge in the public record surrounding copyrighted works as well as deposits to the Library of Congress”).

II. Subjects of Inquiry

The Office invites written comments on the subjects below. A party choosing to respond to this Notice of Inquiry need not address every subject, but the Office requests that responding parties clearly identify and separately address each subject for which a response is submitted. The Office also requests that commenters explain their interest in the study and, with respect to each answer, the basis for their knowledge.

A. Purpose of Deferred Examination Option

1. What specific perceived deficiencies in the current registration regime could a deferred examination option address?
2. What are the potential benefits and drawbacks to offering a deferred examination option? Responses should consider the positive and negative effects on both copyright owners and users, as well as on the registration system itself, and should include any empirical data or other evidence relevant to your assertions. Responses should also consider whether, or to what extent, a deferred examination option might either further or impede the purposes of registration.⁴⁸

B. Procedural Issues

3. If you are advocating for a deferred examination option, describe the specific legal or regulatory framework you envision. Would any statutory amendments be necessary?
4. Should a deferred examination option have any work-based, applicant-based, or other eligibility restrictions? For example, should the availability of the option depend on whether the work belongs to a specific class of works (*e.g.*,

⁴⁸ See U.S. Copyright Office, *Explanation of U.S. Copyright Office Registration Processes and Challenges* at 3–6 (May 31, 2019), <https://www.copyright.gov/laws/hearings/response-to-march-14-2019-senate-letter.pdf>.

photographs), is published or unpublished, and/or is deposited in physical or electronic form?

5. How should deferred examination operate in connection with an application to register multiple works?
6. How should the filing fees be determined for a deferred examination option, including both for the initial submission and later examination, and how should they compare with fees where examination is not deferred?
7. Should applications for deferred examination undergo any kind of initial review (*e.g.*, to verify the accuracy of the filing fee, that the application is complete, that the deposit is in the correct form, etc.)?
8. Who should be permitted to request examination of a deferred examination application package? For example, should such a request be limited to an author or copyright owner, or should other interested parties also be permitted to request examination?
9. Should there be a time limit for requesting examination (*e.g.*, one year)? If so, what should be the ramifications of failing to request examination within the prescribed period? Responses should consider the implications for the Office's administration of the registration system, including the retention and storage of deposits and other application materials, as well as the governing principles that should apply to an eventual examination.
10. How, if at all, should a deferred examination option account for any changes in the required application information that occur between submission and examination (*e.g.*, a change in ownership or publication status)?

11. How, if at all, should any deficiencies in the application materials discovered during examination be addressed with respect to the EDR and the current requirements of section 410?⁴⁹

C. Impact

12. How, if at all, would a deferred examination option affect the public records maintained by the Office? For example, should information about a work submitted for registration using a deferred examination option be indexed into the public catalog prior to the claim being examined and registered? What are the potential benefits and drawbacks to such an approach? For example, how, if at all, may it affect the integrity and reliability of the public record?

13. How, if at all, might a deferred examination option affect the ability of the Library of Congress to maintain and grow its collections?⁵⁰ For example, should a work submitted for registration using a deferred examination option when the claim has not yet been examined and registered be eligible for selection for the Library's collections? What are the potential benefits and drawbacks to such an approach?

14. How, if at all, might a deferred examination option affect the ability to bring suit in light of the Supreme Court's decision in *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC*? For example, should a later request for

⁴⁹ See CVA Registration Modernization 2018 NOI Comments at 20 ("There should be a stop-gap that allows errors in registration to be fixed with the EDR being preserved and warns registrants of the risks.").

⁵⁰ See 17 U.S.C. 704(b) ("In the case of published works, all copies, phonorecords, and identifying material deposited are available to the Library of Congress for its collections, or for exchange or transfer to any other library. In the case of unpublished works, the Library is entitled, under regulations that the Register of Copyrights shall prescribe, to select any deposits for its collections.").

examination be sufficient to bring suit?⁵¹ What are the potential benefits and drawbacks to such an approach?

15. Could a deferred examination option be used for improper purposes, such as to obtain an official record for material that is non-copyrightable in an effort to harass or defraud others? If so, how might such abuses be prevented?
16. How, if at all, might a deferred examination option affect enforcement of a copyright by the U.S. Customs and Border Protection?⁵²

D. Alternative Approaches

17. Could the same goals that a deferred examination option is meant to achieve be accomplished through alternative means, such as by amending the preregistration regime or the eligibility for statutory damages, or by reducing filing fees or adding new or expanded group registration options? Responses should discuss the potential benefits and drawbacks of any alternatives and why they may or may not be preferable.

E. Other Issues

18. Please identify any pertinent issues not referenced above that the Office should consider in conducting its study.

Dated: December 6, 2021.

⁵¹ See CVA Registration Modernization 2018 NOI Comments at 19 (“The Copyright Office should consider whether an application to finalize a provisional registration should be sufficient for filing a lawsuit.”).

⁵² U.S. Customs and Border Protection (“CBP”) has the authority to detain, seize, forfeit, and ultimately destroy merchandise seeking entry into the United States if it bears an infringing copyright that has been registered with the Office, and has subsequently been recorded with CBP. U.S. Customs & Border Protection, *Intellectual Property Rights e-Recordation*, <https://iprr.cbp.gov/> (last visited Dec. 6, 2021). Congress has further required the CBP to implement a process by which it will “enforce a copyright for which the owner has submitted *an application* for registration under title 17 with the United States Copyright Office, to the same extent and in the same manner as if the copyright were registered with the Copyright Office.” 19 U.S.C. 4343 (emphasis added).

Shira Perlmutter,
Register of Copyrights and Director of the U.S. Copyright Office.

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